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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/859,661
Filing Date: May 17, 2001
Appellant(s): FRASER ET AL.

Joel Weiss
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed October 25, 2004 appealing from the Office action mailed October 3, 2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

eSpeed, Inc. et al. v. BrokerTec USA, L. L. C. et al, D. Del., Civil Action No. 03-612(KAJ) as shown in the Appeal Brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,038,284	KRAMER	8-1991
5,243,331	McCAUSLAND et al	9-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(a) Claims 1-5, 7-15, and 34-36 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The fourth paragraph of Claim 1 contains the limitation of "in response to detecting that an aggressor participant's hit or lift trade command would execute a trade in excess of what the aggressor participant may have intended,". However, the specification does not enable one of ordinary skill in the art at the time the invention was made to determine how the invention would be able to determine what *the aggressor participant may have intended*. The specification contains no reference to the aggressor participant's intentions nor to any artificial intelligence program which could possibly be used to predict the intentions of a human participant. For purposes of examination, the Examiner will consider this limitation as meaning that the invention will ensure that the trade is within the normal preset guidelines, i.e. minimum or maximum bid, offer, or quantity, such as is standard practice within the industry.

(b) Claims 1-5, 7-18, 20-23, and 34 are rejected under 35 U.S.C. 102(b) as being separately anticipated by McCausland et al (5,243,331) and Kramer (5,038,284). In order to provide a more concise action on this application, the Examiner will cite features of the claim followed by citation of the appropriate passages from each of the two references. However, the Applicant should consider each reference as a separate and distinct rejection under 35 U.S.C. 102(b).

Claim 1: McCausland and Kramer each disclose a computer trading system, comprising:

- a. Workstations with displays for presenting pending market conditions (McCausland, Figure 2)(Kramer, Figure 3a and col 11, lines 9-12);
- b. A server programmed to conduct trading sequences responsive to trade commands received from the workstation users (McCausland, Figure 1; col 22, lines 43-63; and col 24, lines 7-67)(Kramer, col 5, lines 23-31 and col 9, lines 42-65); and
- c. A state in which the participant is given the chance to amend or cancel the trade prior to the automatic execution of the trade (McCausland, col 25, lines 8-30)(Kramer, col 12, lines 51-61).

While neither reference uses the terminology "trade states" to describe various parts of the computer trading system operation, McCausland discusses that the system can monitor the scheduling of operations and can "change the operational state of the market memory program 90 according to a predetermined time schedule" (col 10, lines 45-51) and during a fatal error recovery will "re-build the exact state of the market prior

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to the fatal error" (col 10, lines 30-44). McCausland further discloses using a menu program which will display to the user a list of choices, "and the user is prompted for selection, which will be the next programs to run" (col 11, lines 64-68). McCausland also discloses that at least some of the data being displayed changes to a default condition upon the user pressing the Bid, Offer, Hit, or Take keys (col 23, lines 1-5) with the defaults being unique and different for each of these keys. Kramer discloses that in response to menu selections (i.e. pressing the Hit key, the Bid key, etc.) certain keys will "light up to indicate which are appropriate answers to menu questions" (col 4, lines 37-40 and Claim 7). Therefore, both references disclose "defining the ability of various participants to participate in said trading activities" which is the Applicant's definition of trade specific states in Claim 1.

Claim 2: McCausland and Kramer each disclose a computer trading system and in Claim 1 above, and further disclose that the system is run using a stored program that controls the trading (McCausland, col 8, lines 25-57)(Kramer, col 10, line 30 - col 11, line 30).

Claim 3: McCausland and Kramer each disclose a computer trading system as in Claim 1 above, and further disclose the user entering commands such as bids, offer, hits, or lifts (McCausland, col 22, lines 64-68)(Kramer, col 12, lines 3-37).

Claims 4, 5, and 7: McCausland and Kramer each disclose a computer trading system as in Claim 1 above, and further disclose the trading states comprising Workup, Workdown, and When states as defined in the table in Figure 11 (McCausland, col 23, lines 6-68)(Kramer, Figure 2 and col 6, lines 17-39 and col 12, lines 51-61).

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Claims 8: McCausland and Kramer each disclose a computer trading system as in Claim 1 above, and further disclose display a bid side and an offer side or a market (McCausland, col 18, lines 49-57 and col 20, lines 25-26)(Kramer, Figure 3a and col 12, lines 10-12).

Claim 9: McCausland and Kramer each disclose a computer trading system as in Claim 8 and further disclose displaying information as to the size of uncleared (unreconciled) bids and offers (McCausland, col 18, lines 49-57)(Kramer, col 12, lines 43-46).

Claims 10-12: McCausland and Kramer each disclose a computer trading system as in Claim 8 above, and further disclose display a list (queue) of bids and offers showing the participants, time and size of entry, and price (McCausland, Figures 6-9 and col 18, line 34 - col 22, line 38)(Kramer, Figure 3a; col 12, lines 3-13; and col 20, lines 43-65).

Claim 13: McCausland and Kramer each disclose a computer trading system as in Claim 12 above, and further disclose displaying information regarding the hits or lifts by the participant (McCausland, col 20, lines 25-26)(Kramer, Figure 3a and col 12, lines 10-12).

Claim 14: McCausland and Kramer each disclose a computer trading system as in Claim 1 above, and further disclose the item being a commodity, security, index, or futures contract (McCausland, col 1, lines 30-33 and col 4, lines 8-14)(Kramer, col 1, lines 8-52).

Claim 15: McCausland and Kramer each disclose a computer trading system as in Claim 1 above, and further disclose the bids and offers pertain to a futures contract (McCausland, col 14, lines 19-20)(Kramer, col 1, lines 8-52).

(c) Claims 16-23 are rejected under 35 U.S.C. 102(b) as being separately anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being separately obvious over McCausland et al (5,243,331) and Kramer (5,038,284).

Claim 16: McCausland and Kramer each disclose a computer trading system, comprising:

- a. Data processor for providing a trading protocol (McCausland, col 10, lines 45-51)(Kramer, col 9, lines 42-65);
- b. Custom designed keypad with specially assigned keys (McCausland, Figure 3 and col 6, line 42 - col 8, line 23)(Kramer, Figure 3a and col 16, table); and
- c. Display for presenting pending bids and offers (McCausland, col 24, lines 2-5)(Kramer, Figure 3a and col 11, lines 9-12).

While both references explicitly disclose that the keyboard contains a plurality of trade execute keys (at least one buy key and at least one sell key), it is not explicitly disclosed that the keyboard has a separate buy key and a separate sell key (i.e. a set of trade execute keys) assigned to each of a plurality of specific securities. However, Kramer discloses using special function keys on the keyboard to provide simplified data entry and further discloses altering these function keys to provide the desired functionality (col 3, line 63 - col 4, line 4). McCausland also discloses a special purpose

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keypad with a variety of special functions assigned to the function keys. While one exemplary mapping is disclosed, it is also disclosed that "other mappings of keypad 200 are possible and are contemplated" (col 6, line 40 - col 8, line 23). Thus, both references disclose that the keys on the keyboard/keypad may be altered to provide the desired functionality. The Examiner also notes that it is common for data processing keyboards to have 10-12 programmable function keys. Therefore, it is inherent that each of the programmable keys may be programmed as separate buy and sell keys for specific securities; or, at least, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a plurality of buy and sell keys could be set up, one pair for each desired security. One would have been motivated to set up special buy and sell keys for specific securities in order to increase the speed in which the operator could enter selections as discussed as being desirous by both references.

Claim 17: McCausland and Kramer each disclose a computer trading system as in Claim 16 above and further disclose a Cancel key (McCausland, "reject" col 7, lines 43-47 and col 23, lines 27-29)(Kramer, "NT", col 16, table).

Claim 18: McCausland and Kramer each disclose a computer trading system as in Claim 16 above, and further disclose displaying the price and size of the bids and offers (McCausland, col 18, lines 49-57 and col 20, lines 25-26)(Kramer, Figure 3a and col 12, lines 10-12).

Claim 20: McCausland and Kramer each disclose a computer trading system as in Claim 18 above, and further disclose moving to the When state (waiting) when a non-priority participant enters a hit or lift (entry while unreconciled entries are

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outstanding)(McCausland, col 9, lines 48-55; col 19, lines 28-38; and col 22, lines 41-62)(Kramer, col 12, lines 51-61).

Claim 21: McCausland and Kramer each disclose a computer trading system as in Claim 16 above, and further disclose presenting (displaying) information based on the current trading state (i.e. bid information is displayed while in the bid state, offer information is displayed while in the offer state, etc.)(McCausland, Figures 6-9 and col 7, lines 7-38)(Kramer, Figure 3a and col 25, lines 9-16).

Claim 22: McCausland and Kramer each disclose a computer trading system as in Claim 16 above, and further disclose the item being a commodity, security, index, or futures contract (McCausland, col 1, lines 30-33 and col 4, lines 8-14)(Kramer, col 1, lines 8-52).

Claim 23: McCausland and Kramer each disclose a computer trading system as in Claim 16 above, and further disclose the bids and offers pertain to a futures contract (McCausland, col 14, lines 19-20)(Kramer, col 1, lines 8-52).

(d) Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by McCausland et al (5,243,331).

Claim 19: McCausland discloses a computer trading system as in Claim 16 above, and further discloses terminating the bid/offer state upon entry of a hit or lift (col 24, lines 64-67).

(e) Claims 31-33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCausland et al (5,243,331) and Kramer (5,038,284). In order to provide a more concise action on this application, the Examiner will cite features of the claim followed by citation of the appropriate passages from each of the two references. However, the Applicant should consider each reference as a separate and distinct rejection under 35 U.S.C. 103(a).

Claims 31-33, 35, and 36: McCausland and Kramer each disclose a computer trading system, comprising:

- a. Workstations with displays for presenting pending market conditions (McCausland, Figure 2)(Kramer, Figure 3a and col 11, lines 9-12);
- b. Central server programmed to conduct trading sequences responsive to trade commands received from the workstation users (McCausland, Figure 1; col 22, lines 43-63; and col 24, lines 7-67)(Kramer, col 5, lines 23-31 and col 9, lines 42-65);
and
- c. A state in which the participant is given the chance to amend or cancel the trade (McCausland, col 25, lines 8-30)(Kramer, col 12, lines 51-61).

While neither reference uses the terminology "trade states" to describe various parts of the computer trading system operation, McCausland discusses that the system can monitor the scheduling of operations and can "change the operational state of the market memory program 90 according to a predetermined time schedule" (col 10, lines 45-51) and during a fatal error recovery will "re-build the exact state of the market prior to the fatal error" (col 10, lines 30-44). McCausland further discloses using a menu

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program which will display to the user a list of choices, "and the user is prompted for selection, which will be the next programs to run" (col 11, lines 64-68). McCausland also discloses that at least some of the data being displayed changes to a default condition upon the user pressing the Bid, Offer, Hit, or Take keys (col 23, lines 1-5) with the defaults being unique and different for each of these keys. Kramer discloses that in response to menu selections (i.e. pressing the Hit key, the Bid key, etc.) certain keys will "light up to indicate which are appropriate answers to menu questions" (col 4, lines 37-40 and Claim 7). Therefore, both references disclose "defining the ability of various participants to participate in said trading activities" which is the Applicant's definition of trade specific states in Claim 1.

While neither reference explicitly discloses enabling the user to exclude or include third party participants from trading with the first participant when completing a trade with the second participant, Official Notice is taken that it is old and well known in the negotiation and auction arts that third party participants can be allowed to participate (included) or prevented from participating (excluded) during the negotiation and consummation of a transaction between the first and second parties. For example, in the normal Dutch (reverse) auction in which a first party is offering a quantity of a product for sale, when a second party enters a bid at a certain price, the auction is stopped while the second party is queried as to the desired quantity of the items. The second party is given a specified amount of time, such as two minutes, in which to consummate the trade. During this time, none of the third parties may enter bids nor participate in the negotiation of the quantity, i.e. they are excluded. However, if the

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second party does not purchase all of the items, third parties may be allowed to buy the remaining items at the same price as the second party, i.e. they are included (in support of this Official Notice, See Rockoff et al, "Design of an Internet-based System for Remote Dutch Auctions", page 11). McCausland asks the user to Confirm or Reject the second party's bid/offer (col 20, lines 58-61) and discusses the differences between a "single-order" trader and a "multi-order" trader (col 22, lines 41-63) and how partial hits or offers are handled (col 24, line 64 - col 25, line 3). Kramer discusses at length how two traders resolve conflicts with unreconciled trades through one-on-one negotiation (col 12, lines 38-61). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the user (first party) to include or exclude other parties when consummating a trade with the second party. One would have been motivated to allow the user to exclude others in order to prevent a barrage of conflicting bids/offers from arriving while the user is attempting to complete the transaction with the second party.

Claim 37: Kramer and McCausland each disclose a computer trading system with a custom designed keyboard as in Claim 16 above, but neither explicitly disclose that the keyboard would contain a plurality of buy and sell keys with one buy key and one sell key assigned to each of a plurality of specific securities. However, Kramer discloses using special function keys on the keyboard to provide simplified data entry and further discloses altering these function keys to provide the desired functionality (col 3, line 63 - col 4, line 4). McCausland also discloses a special purpose keypad with a variety of special functions assigned to the function keys. While one exemplary

mapping is disclosed, it is also disclosed that "other mappings of keypad 200 are possible and are contemplated" (col 6, line 40 - col 8, line 23). Thus, both references disclose that the keys on the keyboard/keypad may be altered to provide the desired functionality. The Examiner also notes that it is common for data processing keyboards to have 10-12 programmable function keys. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that a plurality of buy and sell keys could be set up, one pair for each desired security. One would have been motivated to set up special buy and sell keys for specific securities in order to increase the speed in which the operator could enter selections as discussed as being desirable by both references.

(f) Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer (5,038,284) in view of McCausland et al (5,243,331).

Claim 19: Kramer discloses a computer trading system as in Claim 16 above, but does not explicitly disclose terminating the bid/offer state upon entry of a hit or lift. However, McCausland discloses a similar computer trading system in which the bid/offer state is terminated upon entry of a hit or a lift (col 24, lines 64-67). Therefore, it would have been obvious to terminate the bid/offer state in Kramer when a hit or lift was entered. One would have been motivated to terminate the bid/offer state in order to allow the trader to process other actions after the pending bid/offer had been fulfilled by the hit or lift.

(10) Response to Argument

(a) The Appellant argues against the rejection of Claims 1-5, 7-15, and 34-36 under 35 U.S.C. 112 for failure to describe subject matter in the specification in such a way to enable one skilled in the art to make and/or use the invention, which was directed to the phrase "in excess of what the aggressor participant may have intended". The Appellant has cited several passages from the specification as enabling the system to determine if the hit or lift trade command was in excess of what the aggressor participant may have intended (pages 26-29). However, these passages merely define a situation in which the aggressor participant "has now taken more than he planned" and the system will create "a Second Look State whenever a hit/lift ... occurs while a Bid/Offer is under, e.g., two seconds old." Creating a Second Look State *based on the time between the bids/offers* is not determining that the aggressor participant's bid/offer is in excess of what the participant may have intended. The present system will create this Second Look State for **any** bid/offer received within 2 seconds, whether or not the particulars of the bid/offer (e.g. price, quantity, etc.) have been determined to be outside of what "the aggressor participant may have intended". Therefore, the Examiner still asserts that the specification does not support nor disclose any steps that could be used to determine what the participant may have intended when he entered a bid/offer, such as using artificial intelligence or "fuzzy logic" to compare the bid/offer parameters to a predefined set of parameters to determine if the bid/offer falls within acceptable tolerances.

(b) The Appellant argues against the rejection of Claims 1-5, 7-18, 20-23, and 34 under 35 U.S.C. 102(b) as being separately anticipated by McCausland and Kramer. The main thrust of the Appellant's arguments are that the two references do not disclose their systems entering various "trade states" during a trade (pages 30-35). Initially, the Examiner notes that while the two references use different terminology than the Appellant, they disclose the functionality of the claims (Claim 1: presenting information about pending market conditions, execute trade commands (hit or lift) entered by the traders, and enabling the traders to decline (delete) a previously entered trade). The Appellant is using computer programming "buzzwords" terminology of the late 1980's when the computer programming practitioners were changing from the standard flow-chart method of diagramming computer programs to the "state diagram" method whose notation was developed by David Harel in 1987. Essential to the understanding of the Appellant's argument is a discussion of how "state diagrams" are used and what they contain. While State Diagrams had been used to diagram electronic systems for many years, this was a new method for diagramming computer programs and used "events" and "states" to describe what is happening in the computer. An Event is something that happens at a point in time, such as *user lifts the telephone receiver*. A State corresponds to the interval between two Events, for example, when a telephone receiver is lifted (Event) and before the first digit is dialed, the telephone is in the State of *Dial Tone*. A state diagram relates Events and States. The next State depends on both the previous State and the received Event. The Examiner is including an example of a state diagram of a telephone system to help clarify the issue

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(Raumbaugh et al, "Object-Oriented Modeling and Design", pages 84-91). In the diagram, the rounded boxes are the States, such as "Dialing", "Ringing", "Busy Tone", etc. The lines connecting the rounded boxes are Transitions, each of which correspond to a different Event, such as "called phone answers", "called phone hangs up", etc. This type of notation can be used to describe other types of systems to include the trading systems disclosed by the Appellant's, McCausland's, or Kramer's. For example, Kramer discloses the steps performed to execute a transaction in column 12, lines 3-61 consisting, in part, of (a) "each trader presses his ENTER key"; (b) "the message is sent to the host and processed"; (c) "the host notifies each PTS that messages are being corrected received"; ... (d) the trader depresses the RCN "to display all the data for the transaction" when a mismatch occurs; etc. In a normal flow chart displaying this system, each of the above steps would appear in one of the boxes of the flow chart. If the same system was diagrammed using a State Diagram, the above steps would be described as (a) State: Data Entry; (b) Event: ENTER key depressed; (c) State: PTS Outgoing Transmission; (d) Event: Message is transmitted to host; (e) State: Host Incoming Transmission; (f) Event: Message is received and processed; (g) State: Host Outgoing Transmission; (h) Event: Message is transmitted to PTS; ... (i) State: Mismatch; (j) Event: RCN button depressed; (k) State: Display; (l) Event: data retrieved and displayed; etc. Each of the States would be displayed in the rounded boxes of the State Diagram and each of the events would be associated with the appropriate lines connecting the State boxes.

As shown, the use of "State" terminology in the claims is merely an alternative way of addressing the functionality of the computer programmed to perform the invention. Therefore, the Appellant's argument that the two references cannot disclose the claimed invention because they do not refer to their systems transitioning from one state to another as claimed is, in the Examiner's eyes, non-persuasive.

As per the Appellant's argument that neither reference discloses that "in response to detecting that an aggressor participant's hit or lift trade command would execute a trade in excess of what the aggressor participant may have intended, automatically enables the aggressor participant to decline, prior to execution, at least a portion of only the excess part of the trade" (page 34), the Examiner notes that Kramer discloses the system tracks the time between the receipt of the trades (from the buyer and seller) and automatically identifies trades with "time marking differentials exceeding an acceptable level" (col 6, lines 48-52) and further discloses that the trader may use the keys on the portable device (PTS) "for automatically negating a transaction and for automatically voiding a transaction" (col 5, lines 57-59). Thus, it is disclosed that the system will verify that the time does not exceed a designed limit (such as the argued 2 seconds) and will allow the trade to decline (negate or void) the transaction prior to execution.

(c) The Appellant argues in reference to the rejection of Claims 16-18 and 20-23 that neither reference discloses a custom keypad with a "plurality of trade execute keys, programmed to be individually assigned to a particular security available for trading" (pages 35-36). Initially, the Examiner notes that in response to the arguments

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presented herein by the Appellant, the rejection above has been changed to incorporate the language of a 102/103 alternative rejection. Thus, the 102 rejection of these claims has been maintained, but an alternative 103 rejection has been added. In addition to this, the following response to the argument is given. As presented in response to this argument in the Final Rejection, the Examiner noted that McCausland's disclosure that many different mapping of keys to function can be made renders it a design decision by the user on how to program (map) each key. Likewise, Kramer explicitly discloses that the user can program the function keys to perform specific functions. Programming such special function keys to allow a one button purchase or selection is rampant throughout our society. For example, most fast food restaurant cash registers have large keypads with separate buttons for each of the products. The salesperson only has to press a single button in order to indicate a purchase of that product. In each case, the manager has the option to (re)program the buttons to the desired function. Both references disclose similar reprogrammable keys on their keyboards. As noted above, it would be a design decision of the user on how the various keys would be programmed. If the user consistently needs to access a few specific commodities, it is obvious that the user would program keys for these commodities. If, on the other hand, the user was a "generalist" and covered dozens or hundreds of commodities with similar frequency, then the user may want to program the keys to perform other frequently used functions instead. Again, this is a design decision that does not affect the steps of the claimed method of trading. Furthermore, the Examiner notes that if the trader of the Appellant's invention actively traded 10 or 20 such securities, the claimed keyboard,

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with separate buy and lift keys for each security, would quickly become too cumbersome to operate with any kind of efficiency. On such a system it would be much more efficient to have only one hit key and one lift key and to program the other functions keys for each desired security. The trader then would only need to press two keys – the desired security key and the buy or lift key. The Appellant's argues against the "fast food cash register" example cited by the Examiner in the final response by classifying the keys on the cash register as "not trade execute keys because they are not used to execute trades. Instead, they merely record an intended trade. If the keys used in the restaurant were trade execute keys (which they are not), depressing a key would effect the physical transfer of a hamburger from the restaurant's inventory into a buyer's possession and the transfer of funds from the buyer to the restaurant." (page 38). The Examiner notes that the depressing of the "trade execute" key in the Applicant's invention, likewise, does not effect a physical transfer of the security to the possession of the buyer, but merely initiates the purchase (or sale) of the security. The actual security is delivered to the buyer at some later time. In any case, the fast food restaurant example was not used to show that restaurants initiate security trades, it was used to show the widespread use of keyboards with programmable keys which can be programmed to identify individual products (e.g. securities). Even the standard keyboard used in the general purpose personal computers throughout the world have several programmable "Function Keys", which the user may program to perform a specific function. Since both of the references also disclose such programmable function keys on their keyboards along with other keys which are used to execute trades

(e.g. hit, lift, quantity, reconsider (RCN), etc.), it would have been inherent, or at least obvious, to program the function keys for specific, heavily-used securities.

(d) The Appellant argues in reference to the rejection of Claim 4 that neither reference discloses “that an aggressor participant and a first-in-time pf the passive participants may trade additional volume of an item with each other to the exclusion of other participants desiring to trade” (pages 39-40). The Examiner notes that McCausland asks the user to Confirm or Reject the second party’s bid/offer (col 20, lines 58-61) and discusses the differences between a “single-order” (i.e. exclusive) trades and a “multi-order” (i.e. non-exclusive) trader (col 22, lines 41-63) and how partial hits or offers are handled (Col 24, line 64 – col 25, line 3). Kramer discusses at length how two traders resolve conflicts with unreconciled trades through one-on-one negotiations (i.e. exclusive)(col 12, lines 38-61). Therefore, both references disclose allowing the first party (aggressor participant) to include or exclude other traders when consummating a trade with the second party (passive participant). The Examiner notes that Official Notice was also taken on this feature in the rejection of Claims 31-33, 35, and 36 above. This will be further discussed in response to the Appellant’s arguments to the Official Notice statement below.

(e) The Appellant argues in reference to Claim 19 that McCausland does not disclose “terminating a Bid/Offer state upon entry of a hit or lift”, but “merely shows canceling a previously existing bid or offer made by the same trader who enters a hit or lift command” (pages 40-41). The Examiner notes that as discussed above in reference to “trading states”, it is inherent that upon entry of an Event, the current State is

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transitioned to a new State based on the Event. Therefore, even notwithstanding the cited passage from McCausland, upon entry of a hit or lift command by a trader in McCausland the State of the system would change from Bid/Offer to "Consummate trade" or whatever name the designer has given the next State. However, in all circumstances, the previous State (Bid/Offer) would be terminated and the next State would be entered. McCausland's disclosure of canceling a previous bid or offer when the trader enters a hit or lift command also terminates the previous State and enters the new State based on the hit or offer entry Event.

(f) The Appellant argues in reference to the rejection of Claims 31-33 and 35-37 that the two references and the Dutch Auction are not combinable (pages 41-49). The initial arguments of these claims repeat the "trade commands" and "chance to amend or cancel the trade" arguments in reference to Claim 1 above. The Examiner refers the Board to the response to those arguments above. As per the Dutch Auction argument, the Examiner notes that Official Notice was taken in both previous rejections "that it is old and well known in the negotiation and auction arts that third party participants can be allowed to participate (included) or prevented from participating (excluded) during the negotiation and consummation of a transaction between the first and second parties", and cited a Dutch auction as exemplary of such inclusion or exclusion. In response to the Appellant's attempt to traverse this Notice, the Examiner provided the Dutch Auction reference as the Appellant requested. Thus, the Examiner has not attempted to incorporate the Dutch Auction reference into the other two references, but merely used it to provide support for the Officially Noted fact. The Appellant's argument against the

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combination of the other two references in the rejection of these claims is mute in that the two references were not combined in the rejection, but rather were each separately combined with the Official Notice. The Appellant's argument in reference to Claim 37 (Pages 48-49) repeats the argument pertaining to the plurality of trade keys in reference to the rejection of Claims 16-18 and 20-23. The Examiner refers the Board to the detailed discussion of this argument above. As to the Appellant's argument in reference to Claim 36 (page 49) that the Examiner has not addressed the feature of automatically executing the trade upon expiration of a time period, the Examiner notes that in the rejection of this claim above, this feature fell under the Official Notice and was shown in the Dutch Auction example that it was well known to give the second party "a specified amount of time, such as two minutes, in which to consummate the trade". Upon expiration of the time period two possible actions could be taken by the system – either automatically consummate the trade or automatically cancel the trade. The selection of which of these actions to perform would depend on the rules and regulations installed into the system during its set-up (and possibly current legal standards).

(g) The Appellant argues against the 35 U.S.C. 103 rejection of Claim 19 over Kramer in view of McCausland by repeating the argument previously presented in reference to Claim 19 above that McCausland does not disclose "said Bid/Offer State is terminated by a participant entry of a hit or lift command" (page 49). The Examiner refers the Board to the detailed discussion of this argument above.

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(11) Related Proceeding(s) Appendix

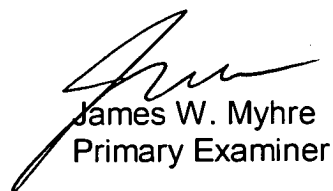
Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided in the Appeal Brief.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


JWM

November 3, 2005


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